Spartan Aviation Industries, Inc. *and* International Union, United Automobile, Aerospace, & Agricultural Implement Workers of America (UAW). Case 17–RC–12041

June 26, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On November 1, 2001, the Union filed a petition to represent all nonsupervisory full-time and part-time flight school employees of Spartan Aviation Industries, Inc. (Spartan), in Tulsa, Oklahoma. Spartan asserts that it is subject to the Railway Labor Act (RLA) because its employees perform work traditionally performed by airlines and several airlines exert significant control over the flight school. Spartan therefore argues that the National Labor Relations Board (the Board) lacks jurisdiction under Section 2(2) of the National Labor Relations Act (the Act). Following a hearing, the Regional Director transferred the proceeding to the Board for resolution of this issue.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case,[1] the Board finds the following.

Spartan operates a flight school in Tulsa, Oklahoma. The current owners purchased the school in July 2001, from which time the school has produced approximately $500,000 per month in gross revenues.

The flight school, which is open to the general public, is licensed by the Federal Aviation Administration to train pilots under Part 141 of its regulations. In addition to actively recruiting students throughout the United States, the school has contracts with several foreign airlines to provide "ab initio," or initial, flight training for employees of the airlines. Upon successful completion of ab initio training these employees obtain their initial commercial pilot licenses. They then receive advanced flight training on various types of aircraft at facilities operated by the airlines. The airlines do not provide any ab initio training.

Spartan contends that the training it provides and its relationship with the airlines bring it within the scope of the RLA rather than the Act. Section 2(2) of the Act provides that the term "employer" shall not include "any person subject to the Railway Labor Act." Similarly, Section 2(3) of the Act provides that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor Act." The RLA, as amended, applies to rail carriers and to:

> [e]very common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner or rendition of his service.

45 U.S.C. § 151 First and 181. The RLA was extended to air carriers by amendments enacted in 1936.

When a party raises a claim of arguable jurisdiction under the RLA, the Board generally refers the case to the National Mediation Board (NMB) for an advisory opinion. However, there is no statutory requirement that the Board first submit a case to the NMB for an opinion prior to determining whether to assert jurisdiction. *United Parcel Service*, 318 NLRB 778, 780 (1995). Although the Board generally makes such referrals, it will not refer a case that presents a jurisdictional claim in a factual situation similar to one in which the NMB has previously declined jurisdiction. See, e.g., *Phoenix Systems & Technologies, Inc.*, 321 NLRB 1166 (1996); *E.W. Wiggins Airways, Inc.*, 210 NLRB 996 (1974).

Spartan argues that this case should be referred to the NMB because the evidence establishes that the NMB's two-part test for determining whether a noncarrier is subject to the RLA is satisfied here.[2] We disagree.

Under the NMB's two-part test for noncarriers, the NMB first determines whether the nature of the work performed by an employer is the type of work traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by a common carrier. Both parts of the test must be satisfied to establish that the employer is subject to the RLA. *System One Corp.*, 322 NLRB 732 (1996).

It is clear under NMB precedent that Spartan does not satisfy the first of the NMB's requirements. In *Airline Training Center-Arizona*, 19 NMB 330 (1992) (*ATCA*), the NMB held that flight training for an initial commercial license is not work traditionally performed by airline employees. The flight school in *ATCA*, like Spartan, provided ab initio training for various foreign airlines. Students who qualified as commercial pilots after initial

[1] Spartan has requested oral argument. The request is denied as the record and briefs adequately present the issues and positions of the parties.

[2] Spartan does not claim to be a common carrier under the RLA.

training at the flight school then went on to receive airline-provided training to qualify to fly certain aircraft.

The NMB found that although airlines typically provide training on a specific type of aircraft or necessary recurrent training, they do not provide the type of training that qualifies individuals for an initial license. The NMB reached this conclusion even though the flight school in *ACTA* was owned by a foreign airline. We therefore find that Spartan, which provides only ab initio training and is privately owned, does not perform work traditionally performed by airline employees.

Spartan argues that this case is distinguishable from *ATCA* because (1) unlike the flight school in *ATCA*, many of Spartan's students are employees of foreign airlines, and (2) the airlines here also provide pilot training to employees.[3] We find no merit in these arguments.

First, the relationship between the students and the airlines was not determinative of the outcome in *ATCA*. Rather, the relevant question was whether the training provided by the flight school was the same type of training provided by the airlines. Second, there is no evidence that the foreign airlines involved here provide ab initio training. As in *ATCA*, the airlines here provide only advanced training on certain types of aircraft to individuals who have already qualified as pilots. Thus, we do not find that this case is distinguishable from *ATCA* in any material way.

Because Spartan does not satisfy the first requirement of the NMB's two-part test, we conclude that it is not subject to the RLA.[4] We therefore find that the Board has jurisdiction in this case under Section 2(2) of the Act. Consequently, we shall remand the case to the Regional Director for resolution of unresolved issues[5] and to take further appropriate action.

ORDER

IT IS ORDERED that this proceeding is remanded to the Regional Director for Region 17 for further appropriate action consistent with this decision.

Dated, Washington, D.C. June 26, 2002

Wilma B. Liebman	Member
William B. Cowen,	Member
Michael J. Bartlett,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] In addition to its argument that *ATCA* is not controlling here, Spartan contends that this case should be referred to the NMB because the NMB has not definitively declined jurisdiction over flight schools. In support of its position, Spartan relies on the following cases: *Eagle Aviation, Inc. and Executive Air Terminal,* 15 NMB 285 (1988); *Tampa Airways, Inc., d/b/a Topp Air Inc.*, 14 NMB 331 (1987); *Papillon Helicopters, Ltd*., 12 NMB 201 (1985); *Pan American World Airways, Inc.*, 4 NMB 129 (1967); and *United Air Lines, Inc*., 4 NMB 30 (1965). We find these cases are inapposite; there is no indication in any of the cases that ab initio training was performed by the employer.

[4] We find it unnecessary to reach the issue of whether the foreign airlines involved here exercise substantial control over Spartan's operations. Because we do not reach the control issue, we find it unnecessary to consider the record evidence regarding the nature of the relationship between Spartan and the airlines.

Prior to the close of the hearing, Spartan requested the right to supplement the record with additional documents related to the airlines' control of its operations. Because this evidence was not available at the time, the hearing officer granted Spartan's request. Spartan subsequently filed a motion to supplement the record with the Board. Although we find it unnecessary to consider this evidence, we grant the motion and accept the documents as part of the record.

[5] At the hearing, in addition to disputing the Board's jurisdiction in this matter, Spartan also disputed the scope of the requested bargaining unit. Upon transferring this proceeding to the Board, the Regional Director postponed indefinitely the period for filing briefs with respect to bargaining unit issues pending the Board's decision regarding jurisdiction. In light of the Regional Director's indication that a new deadline for filing briefs on bargaining unit issues would be established should the Board remand the case to the Region for the purpose of deciding unit issues, we are leaving those issues for resolution by the Regional Director on remand.